ILLINOIS SUPREME COURT
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October 5, 1982

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No. 56746—Jerome P. Jamroch, Indv., etc., petitioner, vs. Morgan M. Finley, Clerk of the Circuit Court of Cook County, Illinois, et al., etc., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today *DENIED* the petition for leave to appeal in the above entitled cause.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

IN THE
APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

JEROME P. JAMROCH, Individually and as Representative of a Class of Persons Similarly Situated,

Plaintiff-Appellant,

No. 81-1517 *v.*

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois, EDWARD J. ROSEWELL, Treasurer of Cook County, Illinois, and the COUNTY OF COOK, a body politic,

Defendants-Appellees.

ORDER

Upon consideration of the petition for rehearing filed on April 5, 1982, by plaintiff-appellant, said petition is hereby DENIED in accordance with Supplemental Rule 23 Order this day filed.

ENTER:

/s/ Mayer Goldberg
Justice

/s/ Thomas A. McGloon
Justice

/s/ John M. O'Connor, Jr.
Justice

ORDER ENTERED
APR 19 1982

FIRST DISTRICT
Filed March 15, 1982

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEROME P. JAMROCH, Individually and as Representative of a Class of Persons Similarly Situated,

Plaintiff-Appellant,

81-1517 *v.*

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois, EDWARD J. ROSEWELL, Treasurer of Cook County, Illinois, and the COUNTY OF COOK, a body politic,

Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
The Honorable George J. Schaller, *Judge Presiding.*

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Jerome P. Jamroch (plaintiff) brought this purported class action to recover interest earned on the refundable portions of bail bond deposits while such deposits were in the custody of Morgan M. Finley, the clerk of the circuit court. The trial court granted the motion of Finley, Cook County treasurer Edward J. Rosewell and the County of Cook (defendants) to dismiss the complaint. Plaintiff appeals.

The facts of this case as set forth in plaintiff's complaint are not in dispute. On or about September 18, 1980, plaintiff was arrested in the city of Chicago and charged with attempted theft. Plaintiff executed and delivered to

the clerk of the circuit court a bail bond for $1,000. Pursuant to statutory provisions (Ill. Rev. Stat. 1979, ch. 38, par. 110-7), plaintiff paid over to defendant Finley a cash deposit of $100, being 10% of the bail.

On or about December 16, 1980, the charge pending against plaintiff was stricken with leave to reinstate and plaintiff was discharged of all obligations in the cause. Pursuant to section 110-7(f) of the Unified Code of Corrections (Ill. Rev. Stat. 1979, ch. 38, par. 110-7(f)), Finley delivered to plaintiff a check in the sum of $90, that being the amount of plaintiff's deposit less 10% thereof deducted as "bail bond costs."

The complaint further alleged, upon information and belief, plaintiff's bail bond deposit was commingled with other such deposits while in the possession of the court clerk and invested in interest-bearing accounts. Plaintiff alleged this interest was either retained by the clerk or delivered over to defendant Rosewell for the benefit of Cook County. The complaint alleged the retention of this interest and the failure to pay it over to plaintiff and the plaintiff class members who actually received their statutory refunds constituted a taking of private property without just compensation. Plaintiff accordingly sought a declaratory judgment and further requested defendants to account for interest withheld from the plaintiff class subsequent to February 18, 1971. Plaintiff also sought a preliminary injunction requesting sequestration of the interest pending final adjudication.

The trial court found the case should not be dismissed as an improper collateral attack on the order of the court which heard the criminal case. However, the trial court dismissed the complaint on the ground the bail bond deposits did not constitute the private property of the depositors.

In our opinion, the complaint was properly dismissed. Our ruling is based, however, on our finding the case is in fact an improper collateral attack. This decision is based in part on our opinion in *Morgan v. Finley* (Docket No. 80-2110, filed March 15, 1982), ... Ill. App. 3d ....., ... N.E.2d ..... These cases have many similarities.

In *Morgan*, the plaintiff had been placed under supervision pursuant to an order in a previous action. This order included judgment for fines and costs. (See Ill. Rev. Stat. 1979, ch. 38, par. 1005-6-3.1(c).) Morgan took no appeal from that order. In a separate action, Morgan argued the imposition of fines and costs as an incident to the supervision order was unconstitutional. In deciding the suit was an improper collateral attack on the prior order, we relied on *Sanner v. Champaign County* (1980), 88 Ill. App. 3d 491, 410 N.E.2d 656. The *Sanner* court held an independent action challenging the orders concerning fines and costs would be an improper collateral attack if the initial judgment order had been a final appealable order. (88 Ill. App. 3d 491, 497.) We held the order of supervision in *Morgan* was an appealable interlocutory order pursuant to Supreme Court Rule 604(b) (73 Ill. 2d R. 604(b)) and our holding in *People v. Tarkowski* (1981), 100 Ill. App. 3d 153, 160, 426 N.E.2d 631. Thus, we followed *Sanner* in affirming the dismissal of the action.

The facts in the instant case are very similar to *Morgan*. There is no question but that the order dismissing the charges against Jamroch was an appealable order under Supreme Court Rule 602 (73 Ill. 2d R. 602). The portion of the judgment regarding the disposition of plaintiff's bail bond was necessarily a part of that judgment and thus would have been before the court in event of a direct appeal. (See *People v. Castile* (1981), 87 Ill. 2d 73, 76, 429 N.E.2d 495.) As in *Morgan*, the plaintiff in the case at bar, did not appeal from the order, but filed this separate action challenging the disposition of a part "necessarily incorporated" into the prior judgment (87 Ill. 2d 73, 76). It therefore follows under our holding in *Morgan* the instant action is an improper collateral attack upon the prior judgment and should be dismissed.

In its decision, the trial court primarily relied on *Chicago Park District v. Kenroy, Inc.* (1978), 58 Ill. App. 3d 879, 374 N.E.2d 670, *aff'd in part* (1980), 78 Ill. 2d 555, 402 N.E.2d 181. We believe, however, *Kenroy* is distinguishable from the instant case. In *Kenroy*, we noted

the issues raised by the plaintiff in the second action would have been "clearly improper" and inappropriate to the initial proceeding. (58 Ill. App. 3d 879, 891.) In the instant case, it is clear that because the bail bond question was necessarily part of the dismissal order, the issue of interest on the bail bond deposit should have been brought before the trial court.

Consequently, there is no necessity for us to consider the remaining contentions by the parties. The judgment appealed from is therefore affirmed.

Dated at Chicago, Illinois, this 15th day of March 1982.

/s/ Thomas A. McGloon
Justice

/s/ John M. O'Connor, Jr.
Justice

/s/ Mayer Goldberg
Justice

FIRST DISTRICT
Filed April 26, 1982

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEROME P. JAMROCH, Individually and as Representative of a Class of Persons Similarly Situated,

Plaintiff-Appellant,

81-1517 *v.*

MORGAN M. FINLEY, Clerk of the Circuit Court of Cook County, Illinois, EDWARD J. ROSEWELL, Treasurer of Cook County, Illinois, and the COUNTY OF COOK, a body politic,

Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
The Honorable **George J. Schaller**, *Judge Presiding.*

SUPPLEMENTAL RULE 23 ORDER UPON DENIAL OF PETITION FOR REHEARING

On April 5, 1982, plaintiff filed a petition for rehearing of the Rule 23 order entered herein on March 15, 1982. The single point is raised that the order "dismissing the charges" against plaintiff was not an appealable order but was "tantamount to a judgment of acquittal which is expressly nonappealable." Therefore, plaintiff urges he could have raised the question of interest on his bail bond deposit other than by direct appeal.

It is incorrect to state that the charges against plaintiff were dismissed. Plaintiff's brief shows the charge of attempted theft against plaintiff "was stricken with leave

to reinstate." This disposition, sometimes referred to as "SOL", is far different from a *nolle prosequi* which is a termination of the charges by dismissal. An excellent and illuminating discourse on the differences between SOL and *nolle prosequi* is set forth in *People v. Sanders* (1980), 86 Ill. App. 3d 457, commencing at page 465, 407 N.E.2d 951. We therefore reject the statement in the petition for rehearing that the order "dismissing the charge" was "tantamount to an acquittal." We renew the statement in our Rule 23 Order that the order of SOL was appealable under Supreme Court Rule 602. In our opinion, a defendant should have the right to a trial and possible vindication if he so desires.

However, as we attempted to bring out in the original order herein, the trial court which heard the criminal case had complete jurisdiction over the disposition of the bail funds deposited by plaintiff. (Ill. Rev. Stat. 1979, ch. 38, par. 110-7(f).) The SOL order entered by the trial court was the entire basis for the refund of the bail money. It was thus the legal duty of plaintiff to bring the matter of disposition and distribution of the bail funds immediately before the trial court so that it could exercise its legal jurisdiction. The process of waiting and the subsequent institution of an entirely new suit cannot be used to evade the rule against collateral attack. The doctrine of *res judicata* applies here to forbid as a collateral attack all questions regarding the bail funds and their disposition "which could properly have been raised and determined" in the same court which entered the SOL. (*Hughey v. Industrial Commission* (1979), 76 Ill. 2d 577, 582, 394 N.E.2d 1164; *Morris v. Union Oil Co. of California* (1981), 96 Ill. App. 3d 148, 154, 421 N.E.2d 278.

The petition for rehearing is accordingly denied.

GOLDBERG, MCGLOON and O'CONNOR, JR., JJ., concur.

Dated: April 26, 1982.

Unpublished Opinion Of The Circuit Court Of Cook County, Illinois

THE COURT: Plaintiff Jamroch, who posted a bail bond when he was arrested and charged with a crime, and who thereafter received a refund of his bail bond deposit pursuant to the Illinois Code of Criminal Procedure, Chapter 38, Section 110-7(f),

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brought this verified class action complaint against the Clerk of the Circuit Court of Cook County, the Treasurer of Cook County, and Cook County, to recover interest earned by the defendants through investment of bail bond deposits. At bar are two motions: First, a motion filed by the defendants to strike and dismiss the complaint; secondly, a motion filed by the plaintiff for a preliminary injunction. The plaintiff has also filed a motion for certification of the class.

The principal issues presented by the motion to dismiss are: First, whether or not this suit constitutes an impermissible collateral attack upon the prior criminal proceeding; and, secondly, whether or not the defendants' retention of interest earned on bail bond deposits amounts to an unconstitutional taking of private property without just compensation.

Under the allegations of the complaint, in September of 1980, the plaintiff Jamroch was arrested and accused of attempted theft. His bail bond was set at $1,000. In order to secure his freedom and guarantee his appearance in court, he executed and delivered to the Clerk of the Circuit

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Court of Cook County a bail bond in the amount of $1,000. Pursuant to the Illinois Code of Criminal Procedure, Jamroch deposited 10 per cent of the bail with the Clerk.

The Illinois Code of Criminal Procedure requires the Clerk to refund to the accused 90 per cent of his cash deposit when the conditions of the bond have been satisfied and the accused has been discharged.

The plaintiff alleges that on December 16, 1980, the charge against him was stricken with leave to reinstate; that he was discharged from all obligations in the cause; and that the conditions of the bond were fulfilled. The Clerk subsequently disbursed $90 to Jamroch—the statutory refund of 90 per cent of his deposit.

In paragraph 6 of his complaint, the plaintiff alleges upon information and belief that it is the Clerk's practice: One, to commingle bail bond deposits posted by persons accused of crimes so as to form a fund consisting of several million dollars; secondly, to invest the commingled bail bond deposits in interest bearing obligations; and thirdly, to retain the interest earned on the

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bail bond deposits, or to deliver the interest to the County Treasurer pursuant to the provisions of the Timely Deposit of Fees Act for the county's benefit.

According to Jamroch, the interest earned on bail bond deposits is the private property of the depositors and the defendants' retention thereof contravenes the due process clauses of the Federal and State Constitutions.

The class allegations in his capacity as representative of a "class" plaintiff seeks, first, retroactive relief for a ten-year period preceding the February 18, 1981 filing of his complaint, and, secondly, for prospective relief. The proposed class consists of all persons arrested in Cook County on or after February 18, 1971 who, like Jamroch, first, posted a bail bond deposit with the Clerk of the Circuit Court of Cook County; secondly, were discharged of all obligations under the bond; and, thirdly, received a 90 per cent refund without interest.

In paragraph 9 of the complaint, the plaintiff recites the requirements of the Civil Practice Act for the maintenance of a class action

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under Section 57.2, and alleges that whether or not the interest earned on all bail bond deposits constitutes the

private property of the depositors, is one of the questions common to all of the members of the proposed class.

In the prayer for relief plaintiff seeks a preliminary injunction prohibiting the defendants from commingling with other funds, interest earned on bail bond deposits; b, requiring the defendants to deposit the interest in a special protest fund to be administered by the court, and, c, prohibiting the disbursement thereof except by court order; secondly, a declaration that interest earned on bail bond deposits, while the deposits are in the Clerk's possession and control, constitutes the property of the depositors; thirdly, an accounting; and, fourthly, an order of restitution, court costs and attorneys' fees.

The defendants have filed a motion to strike and dismiss the complaint on the grounds; first, that this suit constitutes an impermissible collateral attack upon the criminal proceeding; secondly, the plaintiff has an adequate remedy at

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law; thirdly, that the relief requested by the plaintiff contravenes public policy because, inter alia, the costs of distributing interest to bail bond depositors would far exceed any de minimus benefits incurred by the depositors; fourth, that bail bond deposits and the interest earned thereon are not private property and consequently are not protected by the due process clauses of the State or Federal Constitutions; and, finally, that even if the deposits and interest are private property, no unconstitutional taking has occurred.

The plaintiff has filed a motion for the same preliminary injunctive relief requested in the complaint's prayer for relief, and seeks such an injunction without bond.

Without going into the merits of that, obviously, it is based on information and belief, and is not properly considered by the court at this time.

The first issue raised is whether or not the suit should be dismissed on the grounds that it constitutes an imper-

missible collateral attack upon the criminal proceeding. The

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Restatement of Judgments, in paragraph 11, describes a collateral attack as follows:

"Where a judgment is attacked in other ways than by proceedings in the original action to have it vacated or reversed or modified or by a proceeding in equity to prevent its enforcement, the attack is a 'collateral attack.'"

In Section 112 of the same statement provides that:

"A collateral attack upon a judgment is one in which the party making the attack seeks to maintain an action on the ground that the judgment is ineffective as a defense to his claim or seeks to maintain a defense to the ground that the judgment is ineffective as a basis of the claim against him. When allowed, it destroys the effect of a judgment . . . a collateral attack is allowed only when the judgment is void."

In the case of Buford versus Chief of the Park District Police, 18 Illinois 2d 265, the court further went into this matter by defining collateral attack on a judgment as an attempt to impeach that judgment in an action other than that in which it was rendered. Although the overturning of the judgment or decree may be important, or even

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necessary to the success of the action or proceeding, an attack on a judgment or decree is collateral where that action or proceeding has an independent purpose and contemplates some other relief or result.

The same theory is promulgated in Chicago Park District case at 58 Illinois Appellate 3d 879, as suggested by plaintiff in its brief.

The defendants argue that Jamroch could and should have petitioned the criminal court for an award of interest, and that the suit at bar constitutes an impermissible collateral attack upon the order entered in the criminal proceeding.

I disagree. I do not consider this suit to constitute a collateral attack upon the criminal proceeding, notwithstanding the failure of either side to furnish the court with a copy of the order in the criminal matter.

According to the authorities that I have cited, supra, indicates to me that I think if the plaintiff prevailed in the suit at bar his success would have little, if any bearing bearing upon, much less impeach or destroy the effect of, the order entered by the criminal court.

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I do not think that a suit for interest earned on a bail bond deposit reasonably can be construed as an attack upon a criminal court's order pertaining to the guilt or innocence of the accused. Therefore, I do not consider movant's point to be well taken and I hold that the suit at bar does not constitute a collateral attack upon the criminal proceeding.

The second matter addressed in the motion was whether this contravenes public policy. The movants have interposed a number of public policy objections to this lawsuit, all of which improperly are predicated upon new matter not contained in the complaint. A motion to strike or dismiss admits the sufficiency of the complaint. The movants have furnished the court with statistics allegedly demonstrating that the costs of administering a program whereby bail bond depositors would receive interest earned on their deposits, would be unjustifiably expensive when compared to the de minimis benefits incurred by the depositors. The plaintiff then in turn attempted to rebut this improper evidence with a mathematical computation of its own. These statistics may well have been proper

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pertaining to motions or class certification or on summary judgment, they are not proper on a motion to dismiss. I have ignored the arguments by both sides on that point.

The next question is whether the—and the major question as far as I'm concerned—is the constitutional one.

Have the defendants violated plaintiff's due process rights? The due process clause of the fifth amendment of the Federal Constitution provides, in part that:

"Nor shall any person . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

This clause was expressly made applicable to state and local governments through the fourteenth amendment, as set out in the Chicago, Burlington and Quincy case, 166 U.S. 226 and the Penn Central Transportation Company case at 438 U.S. 104.

The constitutional question in my judgment involves two subissues: First, whether or not the bail bond deposit and interest earned thereon constitutes the private property of the

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depositor; and, secondly, whether or not the defendants' retention of the interest amounts to an unconstitutional taking thereof. I hold that bail bond deposits do not constitute the private property of the depositors while in the control of the county. Because of that finding, I found it unnecessary to address the second subissue on the question of taking or the class action problem itself.

The Illinois code of Criminal Procedure establishes three methods whereby an accused can secure his pretrial release: One, personal recognizance under Section 110-2; secondly, the execution of a bail bond and delivery of a 10 per cent deposit to the court clerk as set out in Section 110-7, which is the case here; and, finally, the execution of a bail bond and delivery of the full cash amount, or its equivalent, with the clerk as set out in Section 110-8.

If and when an accused is discharged from the obligations of his bail bond, he is issued a refund of his deposit. Under Method 2, which is the case here, the clerk retains 10 per cent of the deposit or 1 per cent of the full amount of

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the bail to cover the costs of handling the bond. No retention charge, however, is imposed upon an accused who deposits the full amount of his bond with the clerk or who is on a personal recognizance.

In upholding the constitutionality of the legislative classification whereby a retention charge is assessed against only those defendants who are released pursuant to this second method, and not against those who post the full amount of their bail with the clerk, the United States Supreme Court remarked that in the Schilb case at 404 U.S., which was called to the court's attention by the defendants, that:

"One who deposits securities or encumbers his real estate precludes the use of that property for other purposes. Any one who deposits the full amount of his bail in cash is dispossessed of a productive asset throughout the period of the deposit; presumably, at least, its interim possession by the State accrues to the benefit of the State."

While I recognize this observation as dicta, and that it appears in connection with the third method of securing pretrial release, whereby

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no cost retention charge is imposed, rather than the method involved in the case at bar, I nevertheless think that the Court's comment militates against the plaintiff's position that the deposit remains his private property while in the custody of the county.

As has been pointed out by the parties, this is not the first time that an accused sued the Clerk of the Circuit Court of Cook County to recover interest generated by the Clerk's investment of bail bond deposits.

In the Gonzalez case, 30 Illinois Appellate 3d, the Appellate Court upheld Judge Cohen's dismissal for failure to state a cause of action of a suit to recover interest on bail bond deposits.

There, the plaintiff had argued that the Clerk was his trustee or other fiduciary and was obligated to account to

the plaintiff for the profits, which was the interest, derived from the trust, which was the bail bond deposit.

The court stated the rule that the interest generally cannot be recovered in the absence of a contract or statute providing otherwise, noting that the statute in question did not

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entitle a bail bond depositor to recover interest, and the court held that:

"By its silence on the subject of interest for temporary deposits, the Code of Criminal Procedure forecloses such a remedy to depositors."

Jamroch argues that his suit is predicated upon the theory that his due process rights have been violated; Gonzalez was predicated upon the entirely different theory that bail bond deposits comprise a trust fund; that the constitutional question raised by Jamroch was not involved in the Gonzalez case; and consequently Gonzalez does not compel this court to grant the motion to dismiss.

Jamroch further contends that Gonzalez implicitly has been overruled by two recent cases: First was Webb's Fabulous Pharmacies, 101 Supreme Court 446, which was cited by plaintiff, where the interest was earned on an interpleader fund, the conflicting claimants rather than the county were entitled to recover the interest; and secondly, Morton Grove Park District versus American National Bank, 78 Illinois 2d 353,

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where the interest earned on the condemnation fund, the condemnees were entitled to recover the interest.

Webb, which was decided by the United States Supreme Court in December of '80, presented the following issue:

"Where it is constitutional for a county to take as its own, under the authority of a state statute, the interest accruing on an interpleader fund deposited in the registry of the county court, when a fee, prescribed by

another statute, is also charged for the clerk's services in receiving the fund into the registry."

In the Webb case, one corporation, Eckerd's, entered into a contract to purchase another corporation, the Webb. In preparation for closing the purchaser Eckerd's, discovered that the seller's debts exceeded the purchase price. In order to protect itself from the claims of the insolvent seller's creditors, purchaser Eckerd's filed suit in a Florida state court, interpleading Webb's and its creditors and depositing the purchase price with the clerk of the court.

The court ordered the clerk to invest

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the interpleader stake in an interest-bearing account. Although a Florida statute provided that interest belonged to the clerk, the court withheld its ruling as to whether the interest should be distributed to the clerk or to the creditors. The clerk invested the money, and deducted his statutory fee from the stake.

About a year later, the court appointed a receiver for the interpleader fund, and ruled that the interest earned on the stake should be distributed to the receiver, and thus to the creditors, rather than the court clerk.

The Florida Supreme Court reversed on the ground that the interpleader stake was public property while in the clerk's account.

The United States Supreme Court reversed, upheld the decision of the circuit court, and held that the Florida statute was a constitutionally proscribed taking of private property without just compensation insofar as it empowered the clerk to appropriate interest earned on interpleader deposits.

The Court observed that Florida statutes permitted the county to recover two fees: First, the clerk's fee, and then

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secondly, the interest; that only the second was disputed; that the statute failed the rational basis test because the interest retained by the clerk was not reasonably related

to the services rendered or to court costs; that the principal amount of the interpleader funds plainly was private property; that the interpleader fund could not be characterized as public money merely because it temporarily was held by the court; and that:

"A mere unilateral expectation or an abstract need is not a property interest entitled to protection . . . . Webb's creditors, however, had more than a unilateral expectation. The deposited fund was the amount received as the purchase price for Webb's assets. It was property held only for the ultimate benefit of Webb's creditors, not for the benefit of the court and not for the benefit of the county, and it was held only for the purpose of making a fair distribution among those creditors. Eventually and inevitably, that fund, less proper charges authorized by the court, would be distributed among creditors as their claims were recognized

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by the court. The creditors thus had a state-created property right to their respective portions of the fund."

The court went on to say:

"We hold that under the narrow circumstances of this case—where there is a separate and distinct state statute authorizing a clerk's fee for services rendered based upon the amount of principal deposited; where the deposited fund itself concededly is private; and where the deposit in the court's registry is required by state statute in order for the depositor to avail itself of statutory protection from claims of creditors and others—Seminole County's taking unto itself, the interest earned on the interpleader fund while it was in the registry of the court was a taking violative of the Fifth and Fourteenth Amendments. We express no view as to the constitutionality of a statute that prescribes a county's retention of interest earned, where the interest would be the only return to the county for services it renders."

Plaintiff Jamroch argues that the bail bond fund in the case at bar is analogous to the

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interpleader fund in Webb's and that the defendants' retention of interest generated by bail bonds consequently must be regarded as an unconstitutional violation of the plaintiff's due process rights. I disagree.

I am also hoarse.

In Webb's, the interpleader fund was concededly private, and was held solely for the purpose of future distribution to the company's creditors. In fact, the Court emphasized that the money inevitably would be disbursed to the creditors. In the case at bar, however, the bail bond fund is not concededly private. Moreover, there is no guarantee that a bail bond depositor inevitably will recover the deposit, because it might be forfeited by his nonappearance, or applied in satisfaction of a fine. These considerations, in my opinion, militate in favor of a finding that bail bond deposits, while in the control of the county, are not the private property of the depositors.

Plaintiff further argues that the deposit must be treated as his private property because it was neither forfeited nor applied to satisfy

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the fine. I disagree again. Plaintiff is looking at the deposit retrospectively. I think that a retrospective determination of whether or not the deposit constitutes private property would be wrong. The interest is earned while the money is in the county's control and, while the money is so situated, the depositor has absolutely no guarantee of recovering it.

Therefore, the court holds that a bail bond deposit, while in the county's control, is not the private property of the depositor, irrespective of whether or not the deposit eventually is refunded to the depositor.

The second case upon which the plaintiff places his primary reliance is a Morton Grove Park District case. There, the Morton Grove Park District condemned land owned by the defendants. In an eminent domain proceeding, the defendants were awarded the fair market

value of the land, as determined by the jury, together with statutory interest.

The condemnor park district deposited the amount of the judgment with the county treasurer. The condemnees had the following choice:

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they could withdraw the funds and forego an appeal, or they could appeal and forego the immediate possession of the funds. The condemnees chose to appeal the amount of the award. Meanwhile, the park district had the use and possession of the land, and the county treasurer invested the condemnation funds in interest-bearing obligations. When the defendant condemnees were denied leave to appeal, they petitioned for recovery of the interest earned on the deposited condemnation funds as a result of the county treasurer's investment.

The Illinois Supreme Court held that the condemnees were entitled to recover the interest. The court reasoned that the condemnation funds deposited with the county treasurer were the private property of the condemnees because the condemnees had the right to withdraw the funds at any time if they were willing to abandon their appeal.

Unlike that circumstance, a bail bond depositor is not entitled to withdraw his bail bond deposit at any time he may choose. He does not have the right to possess, use, enjoy, and dispose

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of the deposit—right associated with the ownership of property. The interest of a bail bond depositor is, in my opinion, nothing more than an expectation that the deposit will be refunded. As the Supreme Court observed in Webb's, the due process clause does not protect mere unilateral expectations and therefore does not support the plaintiff's claim for interest.

Finally, the People versus Dabbs at 24 Illinois Appellate 3d, which is not cited by either party, in that case a bail bond depositor was awarded a refund of the

deposit plus interest. There, the defendant was charged with burglary. He posted a bail bond, which was forfeited after he failed to appear for arraignment. The county became a judgment creditor of the defendant with respect to the full amount of the bail bond. A higher bail subsequently was set. The defendant's mother, as surety, posted the higher bail bond for son. The conditions of that second bail bond were fulfilled. The trial court, however, refused to refund the deposit to the defendant's mother. Instead, it ordered that the money be disbursed to the county in satisfaction of the debt created

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by the first, the forfeited, bail bond. The trial court ordered the clerk to invest the funds pending appeal.

The Appellate Court reversed and held that the mother was entitled to the balance of the deposit with interest after the 10 per cent costs are deducted.

Dabbs does not support the plaintiff's position. The Appellate Court in effect held there that as soon as the conditions of the bond had been satisfied, the deposit was the private property of the defendant's mother, rather than the property of the county. Accordingly, the interest, which began to accrue not when the money initially was deposited with the county, but rather after the obligations of the bond had been discharged, belonged to the defendant's mother.

Accordingly, gentlemen, the motion to dismiss is granted. This lawsuit boils down to the following question of constitutional law—whether or not bail bond deposits constitute the private property of the depositor so as to fall within the scope of the due process clause.

I hold that such bail bond deposits,

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while in the control of the county, are not the private property of the depositors. Therefore, the county's retention of the interest generated by such deposits does not violate the due process rights of those who post bail bonds.

I specifically indicate that my ruling is based exclusively upon the constitutional question. I have held that this suit does not constitute a collateral attack upon the prior criminal proceeding.

I have held that the public policy considerations should not be considered as they are not properly part of the motion to dismiss; and I have indicated since the preliminary injunction was based on information and belief, it should be given no consideration at this time.

All right, gentlemen, you may make any record you desire.

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT CHANCERY

JEROME P. JAMROCH

Plaintiff

No. 81 CH 1052 *v.*

MORGAN M. FINLEY, et al.

Defendant

ORDER

This cause coming to be heard on defendants' motion to strike and dismiss plaintiff's complaint and upon plaintiff's motion for a preliminary injunction and the court being fully advised in the premises:

The court hereby finds that bail bond deposits, while held by the defendants do not constitute the private property of those making the deposits and that the retention of interest earned on said deposits is not violative of the United States or Illinois Constitutions.

It is hereby ordered that for the reasons set forth in the report of the proceedings held this date, plaintiff's complaint is dismissed and plaintiff's motion for a preliminary injunction is denied.

ENTER:

/s/ George J. Schaller
Judge

June 11, 1981

Ill. Rev. Stat., ch. 38, ¶110-7

(a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than $25.

(b) Upon depositing this sum the person shall be released from custody subject to the conditions of the bail bond.

(c) Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original bail in that court subject to the provisions of Section 110-6 of this Code.

(d) After conviction the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

(e) After the entry of an order by the trial court allowing or denying bail pending appeal either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order increasing or decreasing the amount of bail or allowing or denying bail pending appeal.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. However, in no event shall the amount retained by the clerk as bail bond costs be less than $5.

At the request of the defendant the court may order such 90% of defendant's bail deposit, or whatever amount repayable to defendant from such deposit, to be paid to defendant's attorney of record.

(g) Whenever a defendant who has been admitted to bail utilizes the services of a public defender or other appointed counsel, the amount deposited may be used to reimburse the county funding the legal services.

(h) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith to the accused at his last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State if the charge for which the bond was given was a felony or misdemeanor, or if the charge was quasi-criminal or traffic, judgment for the political subdivision of the State which prosecuted the case, against the accused for the amount of the bail and costs of the court proceedings.

The deposit made in accordance with paragraph (a) shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs it shall be applied to payment of the judgment and transferred to the treasury of the municipal corporation wherein the bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or to the treasury of the county wherein the bond was taken if the offense was a violation of any penal statute of this State. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(i) After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a deposit had been made in accordance with paragraph (a) the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment.